COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 CMR §§ 2.00 et. seq., to promulgate regulations governing an expedited dispute resolution process for complaints involving competing telecommunications carriers as

220 C.M.R. §§ 15.00 et. seq.

D.T.E. 00-39

COMMENTS OF

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Introduction

Pursuant to the June 5, 2000, Order Instituting Rulemaking, AT&T Communications of New England, Inc. ("AT&T") hereby files these comments regarding the regulations establishing an expedited dispute resolution process proposed by the Department of Telecommunications and Energy ("Department").

AT&T applauds the Department's interest in establishing an expedited procedure for resolving disputes and, with a few proposed modifications and additions, supports the Department's proposal. AT&T's suggested changes, and the reasons are underlying them, are listed below.

Comments

A. Applicability.

AT&T understands that the proposed expedited dispute resolution process is intended to apply to disputes between carriers that may arise under Tariff 17 or under other authority apart from interconnection agreements between individual carriers. Where an interconnection agreement provides for a dispute resolution process and a dispute develops in connection with service provided under that agreement, the dispute resolution process in that agreement should govern. Such a result is the only result that is consistent with the Department's ruling and reasoning in D.T.E. 98-57. In its January 6, 2000, order in that docket, the Department stated:

To start, we agree with the CLECs that our policy has the potential to undermine their interconnection agreements and can make it difficult for CLECs to rely on business strategies reflected in those agreements. The Act encourages carriers to fashion agreements through negotiation and arbitration that may have differing provisions between the same incumbent and different CLECs, so that each contract reflects the individual business strategies and priorities of that CLEC. However, by allowing a tariff (or other Department Order) to take precedence over contractual provisions, our policy in practice has the potential to undermine the intent behind the arbitration/negotiation provisions of section 252 of the Act.

AT&T recommends that the Department continue to follow its own policy with regard to the dispute resolution process. In that regard, AT&T recommends that the regulations themselves do not imply that they will apply to all disputes as, it may be argued, they now do.

B. Definition of "Day".

The proposed rules do not define the term "day." AT&T recommends that the Department use the same definition that is used in the general provisions in 220 CMR 1.02(4). There, the term "day" refers to "calendar day," except when the prescribed period is less than five days, in which case the term means "business days." Based on proposed 220 CMR 15.02(3), AT&T assumes that the Department intends the meaning of the term "day" in 220 CMR 1.02(4) to apply to 220 CMR 15.00 *et seq*. The provisions in 220 CMR 1.02(4), however, are - on their face - limited to 220 CMR 1.00. AT&T recommends that the Department make clear in 220 CMR 15.00 *et seq*. that the same meaning for such an important term applies.

C. Time To Resolution.

Under the Department's proposed rules, it could take up to 87 days from the time a dispute materializes until the Department renders its final decision. Such a time period is too long. As discussed below, there are places that the schedule can be collapsed or shortened.

The Department's proposed rules require ***30 days*** (10 for "good faith" efforts to resolve disputes and 20 for mediation with Department staff) ***before a complaint can even be filed***. Such an extensive time period is unnecessary. The initial ten day negotiation period

that must precede even a request for expedited process (220 CMR 15.04(3)) is too inflexible given the numerous types of disputes that could arise and allows one party to the dispute to extend the time for resolving it by simply failing to return phone calls. In any event, it may become apparent after a day that the dispute is one that will not be resolved without outside intervention. The Department should eliminate the 10 day pre-filing requirement and require only that the party seeking expedited process certify that it has made a good faith effort to resolve the problem before filing for expedited process.

The twenty day period during which mediation occurs (220 CMR 15.03(5))and during which the Department considers the application for expedited process (220 CMR 15.04(5)) can also be shortened, or it can be collapsed into the expedited process itself. There is no reason that the complainant cannot file its complaint at the outset, along with the necessary evidence to support the eligibility of the dispute for expedited process. The filing of the complaint should initiate the process. If the Department subsequently determines that the dispute is not appropriate for expedited treatment, it can take the appropriate action. Similarly, the parties can initially attempt to resolve the problem with Department staff assistance and, if successful, terminate the proceeding themselves. AT&T, therefore, recommends that there be no formal mediation process before the complaint and application for expedited process is filed and that five additional days be added to the pre-hearing process to accommodate mediation.

AT&T's recommendations, therefore, would reduce the Department's proposed 87 day period to a more commercially reasonable 62 day period.

D. "Pre-Judgment" Relief.

While the Department's proposed rules, with the changes suggested by AT&T, will benefit greatly the telecommunications industry in Massachusetts by providing a quicker and more certain process and forum for resolving disputes, there will be certain types of operational or service affecting disputes for which a 62 day time period is too long. Such disputes may need to be resolved in a matter of days, if not hours. Moreover, there is the possibility that the complaining party may be irreparably harmed if the other party to the dispute takes a threatened action. Therefore, in order to resolve some disputes in a timely fashion or to prevent one party from taking action that essentially precludes the relief sought by the other, the Department should provide a process for obtaining an immediate and/or preliminary resolution of the problem. At a minimum, the Department should provide a process for obtaining the equivalent of a preliminary injunction that would hold the situation at status quo pending final resolution.

Conclusion

An expedited process to handle disputes between carriers that are not otherwise covered by private interconnection agreements is an important and necessary part of the institutional foundation that must be in place to support and promote competition in a multi-carrier environment. AT&T supports the Department's interest in establishing such a process and submits that the modifications and additions it has proposed above will add

an additional measure of protection for the disputants in cases requiring immediate intervention and will speed up the process for the other types of disputes.

Respectfully submitted,

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

By its attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on June 28, 2000.

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